IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.647/2004

Date of Decision :24.4.2007..

Shamsher Singh. …Petitioenr.

Versus:

Union of India and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Ajay Sharma, Advocate.

For Respondents. Mr.Sandeep Sharma, Assistant Solicitor General.

Sanjay Karol, J (Oral).

On 23rd November, 1973, petitioner was enrolled in the Indian Army as Sepoy. On 21st January, 1995, he was directed to be placed before the Medical Board wherein his disease disability was categorized as "EEE" (PSY.). He was subsequently discharged from the Army. His claim for disability pension was turned down on the ground that the disease is not attributable to the military service. This was done by order dated 24th April, 1996 (Annexure:P-1). His appeal was also rejected vide order dated 20th November, 1997 (Annexure:P-2), inter alia, on the ground that the

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

disability is not connected with the service as has been found by the Medical Board .

From the material placed on record, two things emerge (i) that the reason given by the Appellate Authority is not correct inasmuch as the Medical Board itself has found and recorded that the petitioner was not having the disability prior to his entering the service and (ii) that the disability is neither attributable nor aggravated by negligence or misconduct of the petitioner. Admittedly, the petitioner has been serving the respondents for a considerable period of time that is 21 years without any cause of complaint. Annexure R-3 is a communication dated 28th March, 1996 issued by the respondent wherein it has also been mentioned that the petitioner has suffered the disease while rendering his service in the Army and on which basis he has been invalidated. A perusal of the report of the Medical Report would also show that in fact the Medical Board had recommended the petitioner's case for disability pension subject to the medical authority allowing the same. The petitioner has been found suffering from disease "Affective Psychosis" and he has been posted in J&K Rifles. It is common knowledge that these days defence personnels are posted in hard areas and are working under the extreme hard condition.

For the aforesaid reasons, the present writ petition is allowed. The orders dated 24th April, 1996 (Annexure:P-1) and 20th Novermber,,1997 (Annexure:P-2)

rejecting the claim of the petitioner for disability pension are set aside. The respondents are directed to process the claim of the petitioner in accordance with law within a period of three months from today. The writ petition is accordingly allowed in the aforesaid terms.

(Sanjay Karol),
Judge.

April 24, 2007(R)